Decatur County / P.P.M.E. Local 2003 (Roads)

2007-2008
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SECTOR-1

IN THE MATTER OF INTEREST ARBITRATION

Between:

DECATUR COUNTY,

Public Employer

and

SECONDARY ROADS UNIT --- Public Professional and Maintenance Employees (PPME) LOCAL 2003, I.U.P.A.T.

Employee Organization

ARBITRATION AWARD

Hearing Date: April 23, 2008

Roger L. White

Arbitrator

APPEARANCES

For the Union: Randy Schultz, Business Representative, PPME Local 2003
Doyle Deemer, Union Stewart

For the Employer: Renee Von Bokern, County Representative
Richard D. McKnight, Decatur County Engineer
J. R. Cornett, Decatur County Board of Supervisors
Gary T. Coffelt, Decatur County Board of Supervisors

BACKGROUND

Decatur County is located in southern Iowa. The County (hereinafter "County" or "Employer") is a public employer covered by the provisions of Chapter 20 of the Code of Iowa. Decatur County Secondary Roads Unit -- PPME Local 2003 (hereinafter "Union") is an employee organization certified under the same statutory provision by the Iowa Public Employment Relations Board (hereinafter "PERB") to represent the employees in the secondary roads unit. PERB has designated the employee organization in question as CEO 198 There are approximately 22 employees in this unit (Union Exhibit #3 and Employer Exhibit #1).

The parties have a long history of collective bargaining and a Collective Bargaining Agreement for 2007-08. They are engaged in negotiating a successor agreement for 2008-09. Following a tentative agreement that was rejected by the Union membership (Union Exhibit #5), the parties entered into independent impasse agreements to by-pass fact finding and to extend the statutory completion date of March 15 until May 15. This single arbitrator was appointed by PERB following selection by the parties pursuant to Section 20.22 of the Iowa Code. There were no procedural objections, negotiability disputes or other procedural impairments to arbitration.

HEARING

This matter came for hearing at the Decatur County Courthouse, Leon, Iowa commencing at 1:00 PM on April 23, 2008, before the undersigned neutral. The hearing was electronically recorded. Both parties were afforded a complete opportunity to present exhibits and witnesses, to cross-examine witnesses, to argue their respective positions, and to make closing statements. The parties chose not to file written briefs, and the record on which this decision is based was closed at the conclusion of the hearing at 4:30 PM. The County objected to the relevance of a portion of Union Exhibit # 13 containing Decatur County Resolution 2005-40. This Resolution approved by the Board of Supervisors eliminated the employee payment that had been established to help defray the cost of County medical reimbursements. The arbitrator received the exhibit subject to determination of proper weight. While the Resolution helps document the history of the parties regarding medical reimbursements, it has no impact on the determination of which final offer to award on insurance. This arbitrator has considered all the evidence, and will address and dispose of the major contentions of the parties.

The parties can be assured that contentions and arguments were considered even if not noted in this written award.

ITEMS IN DISPUTE

The items to be decided by the arbitrator in this matter are set out on Joint Exhibit #1--Positions of the Parties and include Insurance, Wages and Holidays. The arbitration final offers of both the County and Union cite a wage increase of 4%. At one point in the presentation, it appeared to this neutral that there were separate interpretations of how a 4% wage increase would be calculated and applied. Following discussion, the parties stipulated that their arbitration final offers on the issue of wages were identical and Joint Exhibit #1 was annotated and initialed by the parties to make this clear. The common 4% wage increase will be the arbitrator 's award for **EXHIBIT A, WAGES.**

ARTICLE 20, HOLIDAYS

Union Final Offer – Add Good Friday to the list of paid holidays.

County Final Offer – No change to current contract language on holidays.

ARTICLE 22, INSURANCE

Union Final Offer – No change to current contract language on insurance.

County Final Offer – Add (**bold**) and delete (~~strike through~~) language as follows:

> The Employer will pay the entire single coverage premium for a regular full-time employee. An employee will be provided the opportunity to purchase family coverage by paying ~~the full family premium less the single premium.~~ **all but $25.00 of the dependent premium (family premium minus single premium).**
>
> ~~The employee is responsible for paying a deductible of $500.00 for single coverage and $1000.00 for family coverage. The County will pay additional medical deductible amounts of $250.00 for single coverage and $500.00 for family coverage and all co-insurance amounts above the total medical deductibles. [Prescription claims are not eligible for reimbursement from the County.]~~

The County reiterated that its final offer for arbitration was identical to the tentative agreement that was rejected. However, the tentative agreement (hereinafter "TA") was for two years and the County's final offer duplicated only the first year. The Union asked the neutral to take notice of the fact that the rejected TA was for two years and the County's final offer was for a single year. While other issues were addressed in the second year, there was no evidence in the record of a nexus or connection that year 1 and year 2 of the TA were contingent on each other. Arbitrators are confined to a single-year award by statute Under the statutory definition of impasse items in interest hearings and by agreement of the parties (Joint Exhibit! #1), the items to be determined by this arbitrator for the 2008-09 Collective Bargaining Agreement are Holidays and Insurance.

GENERAL DISCUSSION OF CRITERIA

In reaching the conclusions for this award, the arbitrator has considered the entire record, reviewed the existing contract provisions and bargaining history, studied the exhibits and analyzed the contentions of the parties giving weight as appropriate. In addition, the arbitrator has specifically considered and used the criteria specified for consideration in Section 20.22(9) of the Iowa Code. Since this is a final and binding arbitration decision, these are essential criteria. The statutory criteria are as follows:

> 9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:
> (a) Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
> (b) Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
> (c) The interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of such adjustments on the normal standard of services.
> (d) The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

a) PAST CONTRACTS: Both parties made reference to the history of negotiations and to past collective bargaining agreements. This was especially true for the case presented by the Union regarding insurance. The effect of past negotiations and contracts is certainly applicable to the insurance issue. The neutral has reviewed the bargaining history in the record and has given it significant weight in making the award.

b) COMPARABILITY: Both parties utilized external comparison groups made up of surrounding counties. The challenge with comparison groups is there are many extenuating and/or unique conditions that make comparisons subjective or difficult to match. Size of counties, population, geographic proximity, bargaining status, financial strength, property values, regional trends, job classifications covered in the unit, methods of calculating costs and differences in benefit plans all make comparisons imprecise.

While there was a great deal of overlap in the suggested comparison groups, there was a slight difference in the two groups. The County included Adams County and the Union did not. Adams County is significantly smaller in population. While there is no requirement in the statute that public employers in a comparison group be of similar size--only that the work is comparable—an entity that is significantly smaller than the others is inherently less similar. For population of the counties, the Union reported 2000 Census and the County used 2002 Population. These data differed and there was no attempt at the hearing to reconcile the differences. While differences exist between the two sets of data, it does not appear to be a significant difference. This arbitrator has studied and utilized the external comparisons provided, giving somewhat more relative weight to the data in the Union's comparison group, which excludes the smaller Adams County. Decatur County appears in the middle of that group of nine according to the data reported. However, there is not a significant difference in the conclusions obtained from analysis of either group. The comparison group used consists of the following counties

with populations reported by the parties as noted (Union Exhibit #1, also Employer Exhibit #2):

County	2000 Census	2002 Population
Appanoose	13,674	13,590
Union	12,416	11,932
Lucas	9015	9501
Monroe	8177	7796
Decatur	**8177**	**8706**
Clarke	8136	9242
Taylor	7152	6793
Wayne	6866	6669
Ringgold	5372	5421

c) ABILITY TO PAY AND PUBLIC WELFARE: The County did not assert an inability to pay. In fact, there was little evidence or argument related to "ability to pay." County Supervisor Cornett referred to the different funding streams for the secondary roads department in his testimony and described the financial challenges facing the County. The Union made arguments related to the welfare of the public employees. Obviously, the welfare of both the public and the public employees is important and the neutral must reach a reasonable balance where there are competing interests.

d) POWER TO LEVY AND APPROPRIATE FUNDS: The County has the power to levy taxes within the limitations of the statute, however this award can easily be met without any tax increases. It is the responsibility of the County to prioritize and appropriate funds within its budget, and this neutral is not going to interfere with that task.

e.) OTHER RELEVANT FACTORS: Among other considerations, "other relevant factors" for this neutral includes a tentative agreement reached by the parties in good faith negotiations and subsequently rejected in ratification. The party that rejected the tentative agreement has a substantial burden to overturn it.

DISCUSSION OF IMPASSE ITEMS--Holidays

Current Contract: Full-time permanent employees receive nine (9) designated paid holidays per year: New Year's Day, Washington's Birthday, Labor

Day, Memorial Day, Independence Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving Day and Christmas Day.

Union Final Offer: Add Good Friday to list of paid holidays.

County Final Offer: No change to current contract.

The Union supports its final offer for the 10th holiday based upon comparability data and the fact that the County by action of the Board of Supervisors has awarded Good Friday as a paid holiday to all employees (unionized and non-unionized) for the past two (2) years. Furthermore, the Union also emphasizes that "holidays" is one of the specifically listed topics requiring negotiation in Section 20.9 of the Iowa Code. The County resists putting the provision in the contract, preferring to give the Board of Supervisors the discretion of awarding or not awarding the paid holiday on a year-by-year basis. The County characterizes the Union's position to add the holiday in the contract as, "No good deed goes unpunished."

The comparison data of both the Union and County seems to support another holiday, though not necessarily the one chosen by the Union – Good Friday. The Union's reported data (Union #6) shows that Decatur County is tied for last place with Ringgold County for holidays only and tied for last place with Clarke County with the combination of holidays and personal days. If a holiday were added as the Union seeks, Decatur County would be more similar to the other counties in the comparison group with ten holidays and one personal day--a total of 11. The County's reported data (Employer Exhibit #7) shows Decatur tied for last place with Appanoose and Clarke counties. There is a discrepancy in the data somewhere because the County stated that its data included holidays and personal days combined. The County listed Appanoose as having a total of ten combined days while the Union's data shows Appanoose as having ten holidays and 12 combined days. If the Union data is accurate, only Clarke County is tied with Decatur County for last place. This comparison data supports the Union's final offer.

According to the County (Employer Exhibit #7), none of the comparables have Good Friday as a holiday, though two of the counties (Monroe and Lucas) are not defined in the exhibit. This information tempers the support for Good Friday as a paid holiday. If given the choice, this neutral would prefer the addition of a different day for the 10th holiday. In arbitration that option is not available. The choice is between accepting the final offer of either party in totality. It would be difficult to justify adding Good Friday except for the fact that the County has unilaterally granted the day for two consecutive years. This is certainly a relevant factor to be considered and this neutral gives considerable weight to the County's past actions. While this may seem to justify the County's characterization of "punishing good deeds," the reality is that "holidays" is a mandatory topic for negotiations into the collective bargaining agreement according to Iowa law. Putting the holiday in the contract is consistent with state policy regarding mandatory issues and constitutes a compelling "other relevant factor."

There was no evidence in the record regarding the cost or the impact on the level of services of an additional holiday, so this neutral is prevented from examining those aspects of the proposal. It is reasonable to assume that an additional holiday would have a cost or service impact until one considers that the County has granted the day to all employees in the past. Therefore, adding the day in the collective bargaining agreement should not have an additional impact on the level of services or a cost to the County. The Union's final offer to add Good Friday as the 10th holiday is more reasonable after considering the statutory criteria, all the above facts and contentions of the parties.

DISCUSSION OF IMPASSE ITEMS--Insurance

Current Contract:

> The Employer will pay the entire single coverage premium for a regular full-time employee. An employee will be provided the opportunity to

> purchase family coverage by paying the full family premium less the single premium
>
> The employee is responsible for paying a deductible of $500.00 for single coverage and $1000.00 for family coverage. The County will pay additional medical deductible amounts of $250.00 for single coverage and $500.00 for family coverage and all co-insurance amounts above the total medical deductibles. [Prescription claims are not eligible for reimbursement from the County.]

Union Final Offer: No change to current contract.

County Final Offer – Add (**bold**) and delete (~~strike through~~) language as follows:

> The Employer will pay the entire single coverage premium for a regular full-time employee. An employee will be provided the opportunity to purchase family coverage by paying ~~the full family premium less the single premium.~~ **all but $25.00 of the dependent premium (family premium minus single premium).**
>
> ~~The employee is responsible for paying a deductible of $500.00 for single coverage and $1000.00 for family coverage. The County will pay additional medical deductible amounts of $250.00 for single coverage and $500.00 for family coverage and all co-insurance amounts above the total medical deductibles. [Prescription claims are not eligible for reimbursement from the County.]~~

The County reiterated that its final offer for arbitration was identical to the tentative agreement that was rejected by the Union. However, the TA (Union Exhibit #5) was for two years and the County's final offer duplicated only the first year of the agreement. Nevertheless, the changes in insurance proposed by the County were the subject of a TA reached voluntarily by the representatives of the parties at the bargaining table in good faith and as such take on a certain standing and importance not otherwise assumed.

The County's health insurance program is obtained through the Iowa Association of Counties (ISAC) group plan #9 and is insured through Wellmark Blue Cross and Blue Shield. The County pays the full premium for single coverage and currently pays nothing toward dependent insurance. The County pays part of the annual deductibles and all of the out-of-pocket maximums through self-insurance. There have been changes over the years in deductibles, co-insurance and out-of-pocket maximums as well as the system of

partial self-funding of deductibles, co-insurance and out-of-pocket maximums by the County. These are part of the bargaining history just as the bargaining that lead to the tentative agreement and the TA itself is an integral part of that history.

This discussion and consideration of insurance must start with the TA and the appropriate weight to give to the TA. The County argues that a TA should be adopted by a neutral in order to encourage good faith bargaining, by placing a heavy burden of proof on the resisting party that the TA is unconscionable and because Iowa impasse precedent dictates sustaining the TA. The Union contends that the statutory process requires an affirmative vote of the membership on a TA or fact finder's recommendation before either is adopted, so the policy of the state is that the membership has the authority to reject a TA. The Union also asserts there was a lack of clarity or understanding on the part of the bargaining team that accepted the proposal and created the TA. The County provides two excerpts from Iowa interest arbitration cases and cites ten other Iowa interest arbitration cases in which a TA was imposed by the neutrals. This neutral has given consideration to these excerpts and cited cases, however the facts and circumstances of each of each of these cases were not provided in the record. The facts and circumstances are individual, unique and critically important in each instance. The lack of the full case histories and full text of the neutral awards in the record leaves this neutral with less information than would be needed to consider the effects of precedent. Therefore the determination cannot be based upon precedent.

Clearly the presence of a TA that was rejected is a relevant factor to consider in finalizing an award on insurance. The questions to be decided are the appropriate weight to give the TA and what standards to apply. The applicable standards are: substantial weight given to the TA; considerable burden of proof on the rejecting party; compelling reason or extraordinary circumstances required to overturn the voluntary TA. In addition, this neutral defines "extraordinary circumstances" as having one or more of the following elements: misrepresentation, bad faith, fraud, substantial mathematical miscalculation,

mistake of material fact, illegality, unconscionable results or one of the parties made it clear at the time that the TA was contingent on some other matter. Adopting these standards in consideration of the present case requires that the Union's reasons for rejecting the TA be explored.

According to the Union's testimony and exhibits, there was a lack of understanding of the elements of the TA. Union negotiation committee member Deemer testified that termination of the County reimbursement of deductibles was understood, but the companion termination of reimbursement of the co-payments that made up the balance of the employee out-of-pocket maximum was not understood. Furthermore, Deemer testified that the Union members saw and had a chance to read the TA document the night of the agreement but did not get a copy at that time. The Union's written narrative submitted into the record as evidence included this paragraph (Union Exhibit #15):

> 2. Another factor to consider is that the bargaining unit had authority to reject the proposed agreement and they did. They also believe that the bargaining team did not realize that raising the deductible high enough to be equal to the full deductible level for ISAC Plan #9 also meant eliminating the reimbursement of the co-insurance to the plan maximum out of pocket value, which is required to completely do away with all medical reimbursements.

Based on this record, the neutral has to determine if the elements necessary for "extraordinary circumstances" are present. The essential elements here could be misrepresentation, bad faith, fraud, illegality, mistake of material fact, unconscionable results or contingent agreement. There was no suggestion or evidence in the record of misrepresentation, bad faith, fraud, illegality, mathematical miscalculation or contingent agreement. A mistake of material fact or unconscionable result might exist if the record supports either. A mistake of fact is suggested as the Union team members thought the TA would only impact the reimbursement for deductibles. Close scrutiny of the actual TA

document is needed to determine if such a mistake of material fact is reasonable under the circumstances.

The insurance provision in the contract had multiple paragraphs (Union Exhibit #2, page 10). The first paragraph dealt with eligibility threshold, the specific health plan, death benefits and deductible amounts. The second paragraph addressed the Employer's obligation to pay the single premium for full-time employees and the employee's opportunity to purchase family coverage. The TA modified this paragraph by adding a new concept—Employer payment of $25.00 for dependent coverage. The third paragraph dealt with the sharing of costs for the deductibles and the Employer's full responsibility for the co-insurance (". . . and all co-insurance amounts above the total medical deductibles.") The TA (Union Exhibit #5) clearly states that the 3rd paragraph is deleted. In addition, there are two other references in the TA document that clarify the deal as follows: "No reimbursement by Co * " with a description of the asterisk as follows: "* only medical services received prior to July 1, 2008 will be paid." While the TA document is arguably a rough draft due to strikethroughs and restatements, the parties did initial it near the top right hand corner. Comparing the content of the paragraphs in the insurance provision and the content of the TA document, this neutral can see only one conclusion—the parties reached an agreement that would completely eliminate the County's reimbursement of medical costs in the next contract. The parties initialed it. While the Union now contends it misunderstood the provisions, this neutral found insufficient grounds in the record to overturn the TA

The first thing that the neutral must do in reviewing whether an unconscionable result occurred from this TA is consider the totality of the TA since there are various trade offs and concessions made in achieving a deal. The County offered a 4% wage increase and improved the dependent insurance provision as part of the trade to eliminate its co-

insurance obligations. The County reiterated this in its presentation. Wages were not an issue in this hearing as a result of the common final offers of the parties, however, the County demonstrated that Decatur County employees are well paid (Employer Exhibit # 6). The 4% wage was not a catch-up proposal but instead was an exchange for the insurance change. In addition, the record shows that a small number of the bargaining unit received the benefit of the County's co-insurance reimbursement: a total of $6185 was paid to 8 employees in 2006 (Union Exhibit #14) and $8758 was paid to 8 employees in 2007 (Employer Exhibit # 3). Because of the overall improvement in both wages and the dependent insurance, and the small number of affected employees, this neutral does not agree that there is an unconscionable result that would justify overturning the tentative agreement. Instead, as the County contended, the TA does appear to address the disparity between the insurance provisions of Decatur County and the other counties in the comparison group (Employer Exhibit #5).

The Union contended that the required ratification process provided the opportunity for the employees to reject the TA. This neutral agrees that the Union membership (as well as the Employer) has the opportunity and the right to either accept or reject a tentative agreement reached by their representatives. In any election in our representative democracy, the voters have free will to vote anyway they wish even if it may not be in their short or long-term interest. In our constitutional system, citizens must accept and live with the consequences of elected representatives after they cast their votes. The result is no different for the Union members in a ratification vote. They have the right, but they must accept and live with the consequences of their vote.

Finally, the Union presented considerable comparison data to support the belief that the TA should be overturned. This neutral considered that data, but also considered that the Union bargaining team members had access to that same comparison

information before they consented to the tentative agreement. The team apparently believed that the TA was consistent with the comparison information to accept the deal. The County's final offer on insurance is more reasonable after considering the statutory criteria, the affect of a TA, as well as all the above facts and contentions of the parties.

SUMMARY

The advocates for both the County and the Union have many years of quality bargaining experience and knowledge Each did credible work as advocates at this hearing. This neutral appreciates the professionalism of the advocates and the clarity of their presentations.

AWARD

Based on the statutory criteria, the evidence in the record and the rationale discussed above, the arbitrator's award is as follows:

Holidays--The Union's final offer to add Good Friday as the 10th holiday is the more reasonable and is hereby awarded.

Insurance—The County's final offer (and the tentative agreement) to contribute $25.00 per month toward the cost of dependent premiums for those employees who select family coverage and the deletion of the provision for County payment of partial deductibles and full co-insurance is the more reasonable position and is hereby awarded.

Wages--The Union and County's joint final offers to increase wages by 4% is awarded.

Dated this 3rd day of May 2008

Roger L. White, Arbitrator

CERTIFICATE OF SERVICE

I certify that on this ___3rd___ day of May 2008, I served the foregoing "Arbitrator's Award" upon each of the parties to this matter by mailing via US Postal Service to them at their respective addresses shown below with appropriate postage affixed.

For the Union:

Randy Schultz, PPME Local #2003 Representative
P.O. Box 54
Sigourney, IA 52591

For the County:

Renee Von Bokern, Employer Representative
2771 - 104th St.
Des Moines, IA 50322

I certify that on this ___3rd___ day of May 2008, I have submitted this "Arbitrator's Award" for filing by delivering it to the Iowa Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319-0203 via US Postal Service with appropriate postage affixed.

Dated this ___3rd___ day of May 2008

Roger L. White, Arbitrator
Cedar Falls, Iowa, 50613-4519